

Court No. - 50

Case :- CRIMINAL REVISION No. - 5672 of 2010

Revisionist :- Smt. Vimla And Others

Opposite Party :- State of U.P. and Others

Counsel for Revisionist :- Raghavendra Dwivedi, Chandra
Prakash Garg

Counsel for Opposite Party :- Govt. Advocate, R.R. Kushwaha

Hon'ble Ram Manohar Narayan Mishra, J.

This criminal revision has been filed against the order dated 24.9.2010 passed by Additional Chief Judicial Magistrate, Hamirpur in Case No. 67 of 2009 (State vs. Ram Bhawan and others) arising out of Case Crime no. 477 of 2008, under Sections 147, 148, 452, 323, 504, 506 IPC and Section 3(1)10 of SC/ST Act, P.S. Sisolar, District Hamirpur whereby learned court below has rejected the application 22-kha moved by the accused revisionists for discharge. The said application was filed before the court below on 20.5.2009 by the accused persons pursuant to direction of this Court in application u/s 482 No. 9000 of 2009 (Smt. Vimla and others vs. State of U.P. and another).

Heard learned counsel for the revisionists and learned AGA for the State.

Learned counsel for the revisionists submitted that he has informed counsel for informant regarding hearing of present case today but he did not appear when the matter taken up.

Factual matrix of the case in brief is that F.I.R. in the present case was lodged by informant Smt. Vimla Devi being Case Crime no. 447 of 2008, under Sections 147, 148, 452, 323, 504, 506 IPC and Section 3(1)10 of SC/ST Act, P.S. Sisolar, District Hamirpur by way of application u/s 156(3) Cr.P.C., on 3.12.2008 at 19:15 hours stating therein that accused Ram Bhawan and others came to the house of informant on 13.7.2008 at 12:00 hours and started abusing the informant when she objected to this from inside the house, they barged into the house of the informant and engaged in Marpeet with her. They dragged her from inside to outside of the home; her neighbours and mother-in-law assembled after hearing cries of the informant and intervened. Accused had also badly beaten her mother-in-law Sukurteen. The informant and her

mother-in-law received serious injury in the incident.

Learned counsel for the revisionist submitted that F.I.R. was lodged on false and fabricated facts, which are unfounded. No injury surfaced during investigation. There is no specific averment regarding offence under Section 3(1)10 of SC/ST Act in the F.I.R. Informant has not disclosed even her caste in F.I.R. The F.I.R. was lodged by I.O. by carrying casual investigation in the case. This is not natural even after being beaten by seven persons, informant or her mother-in-law has suffered no visible injuries in the person. The witnesses are partisan. However, court below has rejected the discharge application moved by the revisionist in mechanical manner without considering the grounds taken in discharge application in proper perspective in the light of material available on record. Learned court below has observed in the impugned order that caste of informant is disclosed as "Dhobi" during investigation which is scheduled caste whereas accused belong to backward class. The evidence collected during investigation suggests that inter-alia offence under Section 3(1)10 of SC/ST Act has been committed. Accused applicants have not been enlarged on bail. Offence as alleged is triable by Special Court, SC/ST Act.

Learned AGA submitted that there is no irregularity or illegality in the impugned order passed by the court below. At the stage of framing of charge, prima facie case is to be seen on the basis of F.I.R. version and evidence collected during investigation. It cannot be said that charge against the accused persons is groundless.

Considering the rival submissions of learned counsel for the parties and evidence on record, this Court is of considered opinion that there is no illegality or perversity in the impugned order passed by learned court below by rejecting the discharge application moved by the revisionists. Offence being triable by Special Judge, SC/ST Act, committing Magistrate is not having jurisdiction to entertain discharge application.

However, considering the fact that offence is punishable maximum term of seven years imprisonment, it is provided that if the revisionists appear and surrender before the courts below within 45 days from today and apply for bail, their prayer for bail may be considered and decided in view of the settled law laid by Hon'ble Apex Court in the case of **Satender Kumar Antil vs. Central Bureau of Investigation** and another reported in 2022 SCC OnLine SC 825.

For a period of 45 days from today or till the disposal of the application for grant of bail whichever is earlier, no coercive action shall be taken against the revisionists. However, in case, the applicants do not appear before the Court below within the aforesaid period, coercive action shall be taken against them.

This is also observed that he accused revisionists will have liberty to renew their prayer for discharge before trial court after committal of the case to court of Special Judge, SC/ST Act as discharge application was wrongly moved before the court of Magistrate instead of before the trial court i.e. Special Judge, SC/ST Act.

With the aforesaid directions, this criminal revision is finally disposed off.

Order Date :- 31.10.2023

Dhirendra/